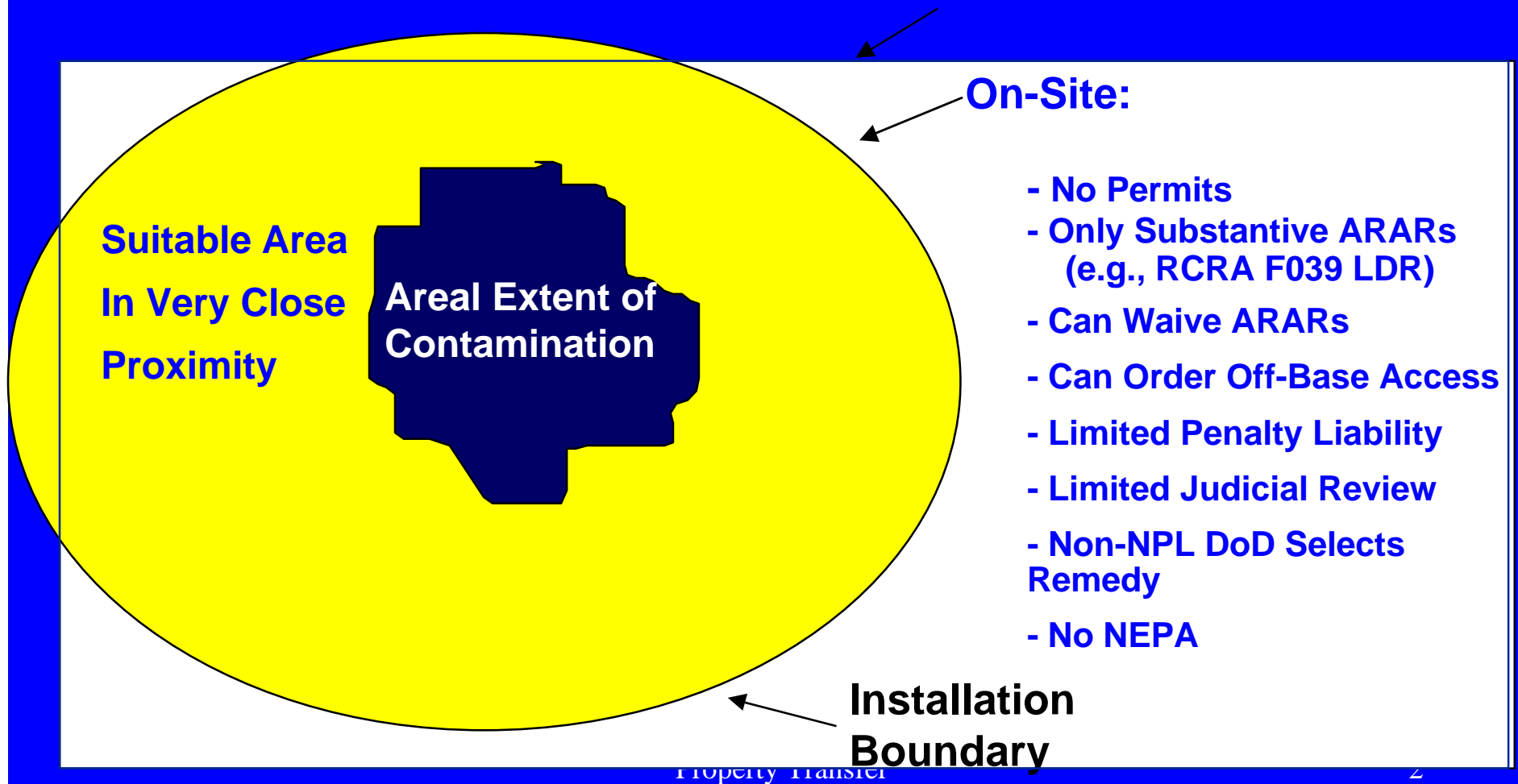


Property Transfer:

BRAC and Non-BRAC

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Property Transfer: BRAC and Non-BRAC

Under what circumstances will DoD return to conduct further cleanup after property has been transferred?

- CERCLA Section 120
- P.L. 102-484 Section 330
- New DoD policy

Who is Covered?

- ◆ CERCLA Section 120 (CERCLA releases) covers conveyance of all property, BRAC and non-BRAC (in fee or leases)
- ◆ P.L. 102-484 Section 330 (personal injury and property damage, including economic loss) covers BRAC property being conveyed (in fee or leases)

What Do They Mean?

- ◆ Subject to interpretation
- ◆ A new area with little guidance
- ◆ See Louisville Lite model indemnification language for insight

Best Way to Meet Obligations?

- ◆ CERCLA Section 120 - *transferring agency or DOJ*
- ◆ P.L. 102-484 Section 330 - *DOJ*
- ◆ Federal transferees do not get protections provided by these covenants

CERCLA Property Transfers

- ◆ CERCLA Section 120(h)(4):
 - Clean transfers
- ◆ CERCLA Section 120(h)(3)(A):
 - Transfer where cleanup is “operating properly and successfully”
- ◆ CERCLA Section 120(h)(3)(C):
 - Early transfers
- ◆ CERCLA Section 120(h)(3)(B):
 - Transfer to PRP for cleanup

Industrial Waste Disposal

- ◆ Who pays for disposal of discarded infrastructure:
 - Carpets, curtains, old calendars, pizza boxes?
 - Asbestos, lead-based paint, light bulbs?
 - “Industrial quality” soil that can stay on-site?
- ◆ Answers: transferee -- these are NOT “environmental conditions”
- ◆ Transfer Golden Rule: As Is, Where Is, What Is?

LRAs and BRAC

- ◆ Independent testing should be limited to allowing “due diligence” examinations
- ◆ Transferee’s desires in terms of future land use (and associated cleanup levels), according to the Base Reuse Implementation Manual, will be accommodated to the maximum extent possible -- but there will NOT be complete deference

For Information On Land Use Controls (BRAC & Non-BRAC):

- ◆ DoD and EPA policy letters
- ◆ Albany, GA
- ◆ Jacksonville, FL
- ◆ Yuma, AZ
- ◆ CMECC, CA
- ◆ EPA Region IV proposal

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